

Members

Rep. Robert Kuzman, Chairperson
Rep. Dale Sturtz
Rep. Ralph Ayres
Rep. Kathy Richardson
Sen. Richard Bray
Sen. David Ford
Sen. William Alexa
Sen. Timothy Lanane
Justice Randall T. Shepard
Timothy Curley
Ernest Yelton
David Lewis
Sarah Taylor



COMMISSION ON COURTS

Legislative Services Agency
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Authority: IC 33-1-15

MEETING MINUTES¹

Meeting Date: September 6, 2001
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Robert Kuzman, Chairperson; Sen. Richard Bray; Sen. William Alexa; Sen. Timothy Lanane; Timothy Curley; Ernest Yelton; David Lewis; Sarah Taylor.

Members Absent: Rep. Dale Sturtz; Rep. Ralph Ayres; Rep. Kathy Richardson; Sen. David Ford; Chief Justice Randall T. Shepard.

Chairman Kuzman convened the meeting at 1:15 p.m. He indicated that he planned to have two more meetings: One meeting to review the need for new courts and one meeting to examine the issues of civil pauper issues, redocketing fees, and protective orders.

In the first order of business, the Commission members approved the minutes of the meeting on August 14.

Rep. Kuzman then recognized Senator Luke Kenley to discuss the issue of court-appointed attorneys for pauper litigants.

Background:

IC 34-10-1-1 specifies that

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

An indigent person who does not have sufficient means to prosecute or defend an action may apply to the court in which the action is intended to be brought, or is pending, for leave to prosecute or defend as an indigent person.

IC 34-10-1-2 specifies that

If the court is satisfied that a person who makes an application described in section 1 of this chapter does not have sufficient means to prosecute or defend the action, the court shall:

- (1) admit the applicant to prosecute or defend as an indigent person; and
- (2) assign an attorney to defend or prosecute the cause.

All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

Several offenders in Department of Correction (DOC) facilities have used this statute to file cases in trial courts for what some consider to be frivolous causes. As an example, an offender who was sentenced to life imprisonment without parole is using the statute to receive county-paid representation to contest a divorce from his wife.

More than five bills were introduced last year to address the issue by either repealing IC 34-10-1-2 or by adding restrictive language.

The following persons testifying discussed the advantages and disadvantages of each option.

Senator Luke Kenley

Senator Kenley told Commission members that no other state comes close to having the mandatory law that Indiana has that requires the appointment of counsel for indigent persons in civil cases.

He next reviewed his assembled document which included the following:

- Indiana statutes requiring or allowing appointment of counsel for indigent persons (Attachment A)
- Statutes in other states requiring or allowing for appointment of counsel for the indigent (Attachment B)
- The power of courts to appoint indigent counsel in the absence of empowering statutes (Attachment C)
- Pro bono representation in Indiana (Attachment D)
- Past and projected expenditures for criminal defense (Attachment E)
- The introduced and amended versions of SB 104 – 2001 (Attachment G)

Senator Kenley concluded by suggesting that the Commission consider repealing IC 34-10-1-1 and IC 34-10-1-2 and, if necessary, augmenting the current Indiana statutes requiring or allowing appointment of counsel for indigent persons with other narrow requirements for specific needs. This is because state law already provides indigent persons with the right to counsel in most areas. He also suggested that the General Assembly needs to find a funding source for reimbursing attorneys for representation in these types of cases.

Commission members discussed this issue in more detail. Rep. Kuzman noted some of the problems that result when litigants represent themselves in court without legal counsel. He indicated that court schedules become congested because the litigants do not comply with filing deadlines and are not aware of the rules of the court. Senator Bray indicated that the awareness of IC 34-10-1-2 will especially be a problem for counties with prisons. Judge Yelton

noted that the issue of frivolousness of cases can be addressed by examining the merits of the cases.

Senator Lanane indicated that he introduced SB 65 to address this issue. SB 65 specified the method that courts need to review these cases before appointing counsel for indigent litigants. (See Attachment H.)

Representative John Ulmer

Rep. Ulmer told the Commission that he introduced HB 1071 in the 2001 General Assembly. (See Attachment I.) He indicated that the bill passed the House of Representatives by a substantial vote.

He told the Commission members that, while he was confident that judges will make the correct decision about appointments, the General Assembly needed to provide the courts with additional guidance about legislative intentions.

He said that the courts will look at the merits of the case and, in all likelihood, the judges won't appoint anybody in 90% of the cases.

Rep. Ulmer also cited two different cases that judges in Elkhart County cited because of this law. (See Attachments D and E.)

In discussion with the members, the following points were made:

- Members of the House of Representatives most likely opposed repealing IC 34-10-1-2 because they wished for the courts to examine the merits of each case prior to a decision to either appoint or not appoint an attorney to represent the indigent person.
- An estimated \$1 million has accumulated in Interest on Lawyer Trust Accounts (IOLTA) since the inception of the program in October 1999 . The proceeds from these funds are intended to assist in expanding pro bono programs across Indiana.

Staci Terry, Associate Attorney, Gardner, Sayre & Weikart

Ms. Terry made the following points to the Commission members:

- IC 34-10-1-1 and IC 34-10-1-2 have existed for over a century, and the courts have not been unduly affected by the statute's requirements until recently. She did not anticipate that a new influx in case filings would occur because of this statute.
- The state legislature should be more concerned about the indigent citizens who do not have attorneys to represent them in civil matters.
- Giving the courts discretionary powers to appoint counsel allows some judges to not appoint counsel even if the litigator needs counsel. This is unfair since it is nearly impossible for a person who does not have legal representation to succeed in court.

- She supported the language of SB 65, since it provides some guidelines for making appointments.

Ms. Terry suggested three potential solutions to the issue of appointing pauper counsel in civil actions:

- Indigent litigants should meet financial eligibility guidelines, like the Federal Poverty Guidelines.
- Indigent litigants should exhaust all local legal assistance resources prior to requiring the courts to appoint pauper counsel.
- Education programs at the local level can reduce the need for legal services (e.g., instructing unrepresented litigants in how to complete a child support worksheet).

During the following discussion, the following points were also raised:

- The need for legal representation is particularly a problem in child custody cases.
- The courts need to put more pressure on the local bar to provide legal representation to low-income individuals.
- Whether granting free, continuing legal education credits to members if they provide a certain amount of pro bono services is not a clear alternative. Reportedly, the Indiana Supreme Court does not favor such an approach.

Larry Hession, Practicing Attorney in Hendricks Co.

Mr. Hession is a former judge in Hendricks County Courts and currently serves as a senior judge. He noted that the pauper counsel statute has been underutilized in the past but predicts that more attorneys will be appointed under this statute as more offenders in DOC facilities become aware of its existence. He notes that three penal facilities are located in Hendricks County and that there are several civil litigation cases involving offenders already in the courts in Hendricks County.

He also indicated that the judges in Hendricks County think that the cost of civil counsel will exceed the cost of criminal counsel in a few years. He indicated that this is particularly a problem in child custody disputes.

He noted that the financial cost of this statute will be significant and that changing the language from discretionary to mandatory is not enough. The entire statute should be repealed.

Jeff Baldwin, Practicing Attorney, Hendricks County

Mr. Baldwin told the Commission members that if IC 34-10-1-1 and IC 34-10-1-2 is left intact, the state as well as counties will likely incur significant expenses. This is

because individuals also have the right to be represented on appeal before the Indiana Court of Appeals and the Supreme Court, as well as in the trial courts.

During the following discussion, the following points were raised:

- If the legislature removes this section of statute, the courts will likely appoint attorneys to represent indigent persons involved in civil cases anyway.
- The standard of indigency for criminal defense representation should not apply to indigency standards in civil cases. The state would need to have narrower standards for civil appointments.
- A complete repeal probably will not successfully address the problems cited, since the Indiana Supreme Court may consider the General Assembly to be silent on the issue.
- The General Assembly would be better off providing the courts with some guidance in its intent for representation of indigent persons in civil matters.
- Since counties with state prisons are likely to face the most significant demand for legal representation in civil matters, the state could provide additional sources of funding for legal representation for offenders in these prisons

Rep. Kuzman announced that the next meeting was scheduled for Thursday, October 4, at 1 p.m.

The meeting was adjourned at 3:15 p.m.

Attachment A

Indiana Statutes Requiring or Allowing Appointment of Counsel for Indigent

IC 11-13-6-9	Parole Hearing
IC 12-10-3-22	Hearing to determine whether a person is an endangered adult that is required to received protective services
IC 12-20-15-6	Appeal from denial or reduction of poor relief
IC 12-26-2-5	Discretionary authority to appointment counsel for petitioner in action for detention or commitment of mentally ill person
IC 16-39-3-5	Required appointment of counsel for release of mental health records of indigent person in an inpatient treatment facility
IC 16-41-9-2	Proceedings to impose restrictions on individual with certain communicable or dangerous communicable diseases or require mandatory testing
IC 31-15-6-6	Discretionary authority to appoint lawyer for guardian ad litem or court appointed special advocate in dissolution and legal separation actions.
IC 31-17-6-5	Discretionary authority to appoint lawyer for guardian ad litem or court appointed special advocate actions: (1) for child custody and modification of child custody orders; (2) related to visitation rights of noncustodial parent; (3) for appointment of a guardian ad litem or court appointed special advocate; or (4) to determine fees and costs of a party
IC 31-32-3-4; IC 31-32-3-5	Discretionary authority to appoint lawyer for guardian ad litem or court appointed special advocate in actions in any juvenile proceeding
IC 31-32-2-5; IC 31-32-4-1; IC 31-32-4-3	Required appointment of attorney for parent in a proceeding to terminate the parent-child relationship

IC 31-32-2-2; IC 31-32-4-1; IC 31-32-4-2; IC 31-37-8-4 (interview); IC 31-37-6-5 (detention hearing); IC 31-37-12-3 (initial hearing)

Required appointment of attorney for child charged with a delinquent act

IC 31-37-23-1

Discretionary authority to appoint lawyer for a runaway detained under a requisition order issued under authority of Interstate Compact on Juveniles

IC 33-9-11-1; IC 33-9-11-5

Appointment of public defender in criminal proceedings

IC 34-57-3-4

Community dispute resolution centers program required to provide service to indigent

IC 35-34-2-5 (grand jury); IC 35-33-7-6 (probable cause hearing); IC 35-36-6-9 (venue cases)

Criminal proceeding

Attachment B

Statutes in Other States Requiring/Allowing Appointment of Counsel for Indigent

Colorado

-27-10.5-130. Requires court to appoint counsel for the respondent in a proceeding seeking court order for sterilization of respondent.

Illinois

-725-207/1. Requires the court to appoint counsel in a proceeding to designate a prisoner a sexually violent person.

-735-5/5-101. Allows a court, in its discretion, to appoint counsel for indigent if the person is an out of state resident required to post a security bond prior to commencement of an action.

Iowa

-229A.6. Requires the court to appoint counsel in a proceeding to designate a prisoner a sexually violent person.

-633.575. Requires the appointment of counsel to a ward of the state in a hearing for the appointment of a conservator.

-1.15. Requires the appointment of counsel for a member of the Sac or Fox Indian settlement if the state of Iowa, or its subdivisions, is a party in a civil proceeding.

Montana

-53-20-125. Requires the court to appoint counsel for respondent in action for commitment to a residential facility for the seriously developmentally disabled.

North Carolina

-35A-1101. Entitles respondent to court appointed counsel in action to determine competence.

South Dakota

-21-27-4. Requires appointment of counsel in a proceeding (including civil) in which a person has been committed, detained, imprisoned, or restrained of liberty.

Texas

-26.049. County courts (limited jurisdiction in criminal and civil cases) may appoint counsel to represent a party who makes and affidavit that the person is too poor to employ counsel.

Virginia

-53.1-40.1. Requires appointment of counsel in a proceeding to designate a prisoner as
a sexually violent person.

Wisconsin

- 252.07(9)(d). Requires appointment of counsel in a hearing to confine or quarantine a person based on health or epidemiological grounds asserted by the department of health.
- 880.34(4). Requires the court to appoint counsel to a ward of the state in a proceeding to challenge competency of a guardian or guardianship.

Attachment C

Power of Courts to Appoint Indigent Counsel in Absence of Empowering Statute

A court may appoint counsel for the indigent in a civil proceeding, even in the absence of a statutory provision expressly granting such power to the court. A court's ability to do this in Indiana is rooted in the due process clause of the 14th amendment to the United States Constitution. See Lassiter v. Department of Social Services, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981). In determining if a person is entitled to court appointed counsel in the absence of a statute, there is a multi-step test used by courts. In re Marriage of Stariha, 509 N.E.2d 1117 (Ind. App. 1987). The test is as follows:

(1) If an indigent person's physical liberty is at stake, then the court must appoint counsel. Lassiter, 452 U.S. 18.

(2) If the person's physical liberty is not at stake, then the court must analyze three (3) factors established in the Eldridge case and balance these factors with the presumption against court appointed counsel. Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d. 18 (1976). The Eldridge factors are as follows:

(A) The private interests at stake.

(B) The government's interest.

(C) The risk that the procedures will lead to erroneous decisions. Id.

If the analysis falls to sub-part two (2), the court may only grant counsel to an indigent person if the three (3) factors set out in Eldridge establish a right to appointed counsel and overcome the presumption that the person is not entitled to counsel unless threatened with the loss of physical liberty. Stariha, 509 N.E.2d at 1120. In the absence of an authorizing statute this analysis takes place on a case by case basis. Id.

The court in the Fellerhoff case summed up the use of the above test as follows:

To characterize a proceeding as civil rather than criminal is a distinction without a difference if the end result is loss of physical liberty. Appointment of counsel is an absolute requirement of due process whenever the proceeding may result in imprisonment of that defendant. We believe the balancing factors in Eldridge apply only in cases where the right is not absolute, and the court must determine whether there is a right to counsel under a particular set of facts. Mastin v. Fellerhoff, 526 F.Supp. 969 (S.D. Ohio 1981).

Attachment D

Pro Bono Representation in Indiana

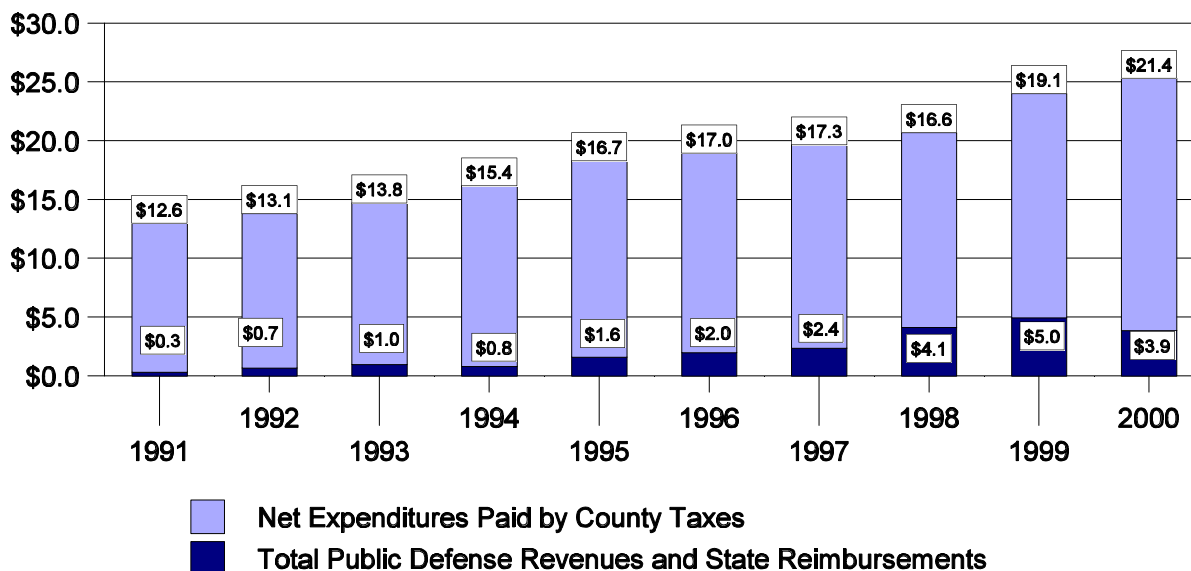
Pro Bono representation in Indiana is controlled by the Indiana Rules of Professional Conduct. In 1997 the Indiana Supreme Court adopted what can be characterized as a voluntary pro bono plan. (See for example Rule 6.1 which states, "A lawyer should render public interest legal service.....by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations....") The commentary to Rule 6.1 notes the difficulty of achieving such service by stating, "...but the efforts of individual lawyers are often not enough to meet this need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government."

The 1997 change implemented the use of a twenty-one (21) member Indiana Pro Bono Commission with members appointed by the Indiana Supreme Court and the Indiana Bar Foundation. I.R.P. 6.5. The commission is responsible for management of the voluntary pro bono plan, including funding decisions and disbursement of funds to pro bono organizations and projects. I.R.P. 6.5(c). Additionally there is established one (1) district pro bono committee in each of the fourteen (14) judicial districts. I.R.P. 6.5(f). This district committee is charged with ensuring an active and effective pro bono program in each district. I.R.P. 6.5(g).

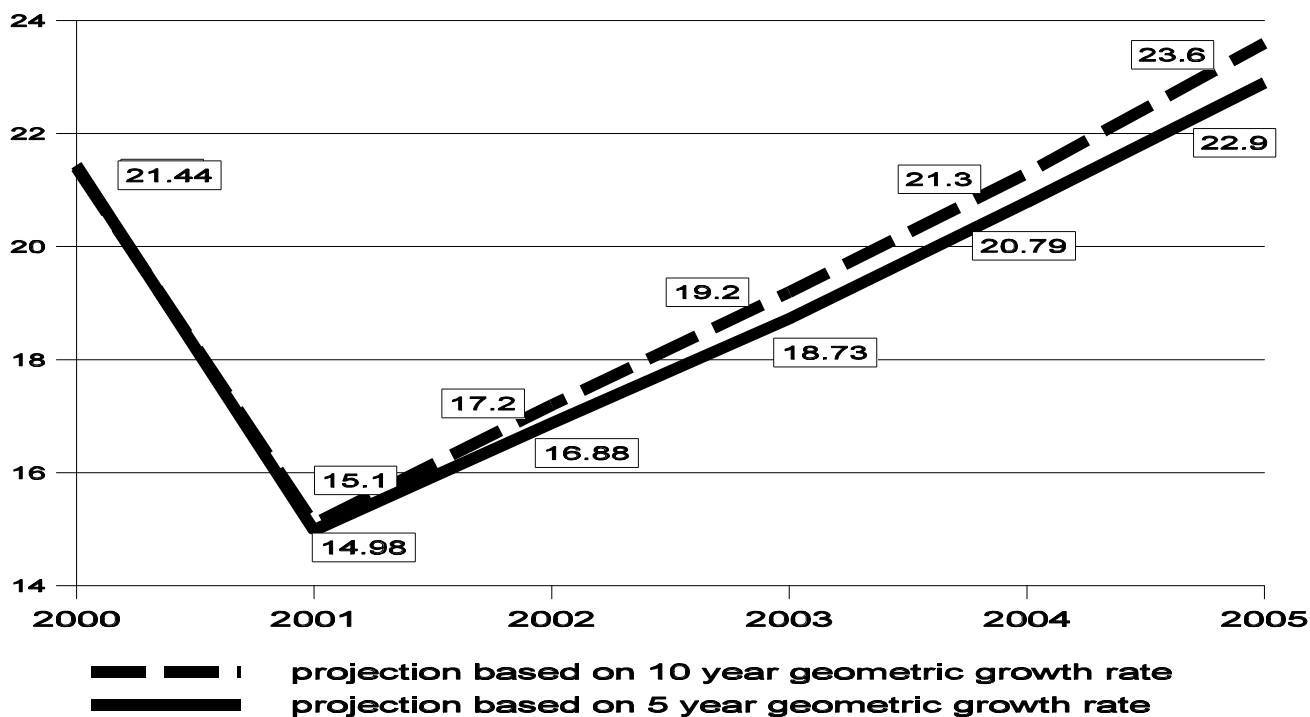
Funding provisions for pro bono work can be found in the Indiana Code. IC 33-20 establishes interest bearing trust accounts. This chapter of the code requires attorneys (most generally in private practice) to open an interest bearing trust account at a financial institution. Funds are deposited in the accounts by attorneys (these funds are predominantly fees paid to the attorney by clients). The financial institution, usually quarterly, calculates the interest that has accumulated in the account and remits that amount to the Indiana attorney trust account board. The board deposits the accumulated interest into a specified fund, and uses that money for civil legal assistance and public interest programs.

Another funding mechanism for pro bono work can be found under IC 33-2.1-11 (The Civil Legal Aid Fund). This fund is administered by the division of state court administration. The Civil Legal Aid Fund provides annual funding to private, non-profit legal service providers. The amount each legal services provider receives is determined by the division of state court administration. The Civil Legal Aid Fund receives two (2) appropriations (June 30; December 31) each year of five hundred thousand dollars (\$500,000) from the state general fund.

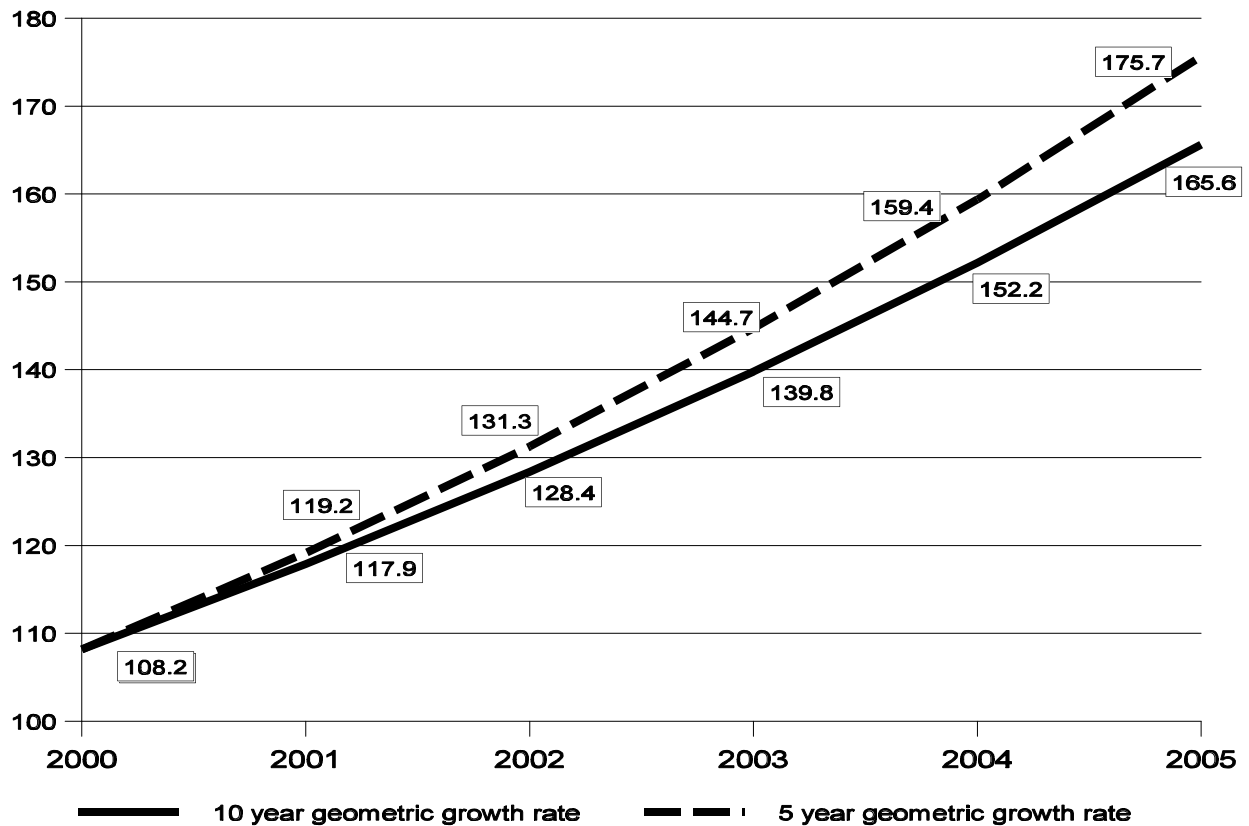
Sources of Revenue for Legal Services for Indigent Criminal Defendants (In Millions), 1990 through 2000



Net Expenditures Paid by County Taxes (in Millions) for Legal Defense for Indigent Criminal Defendants, Through 2005

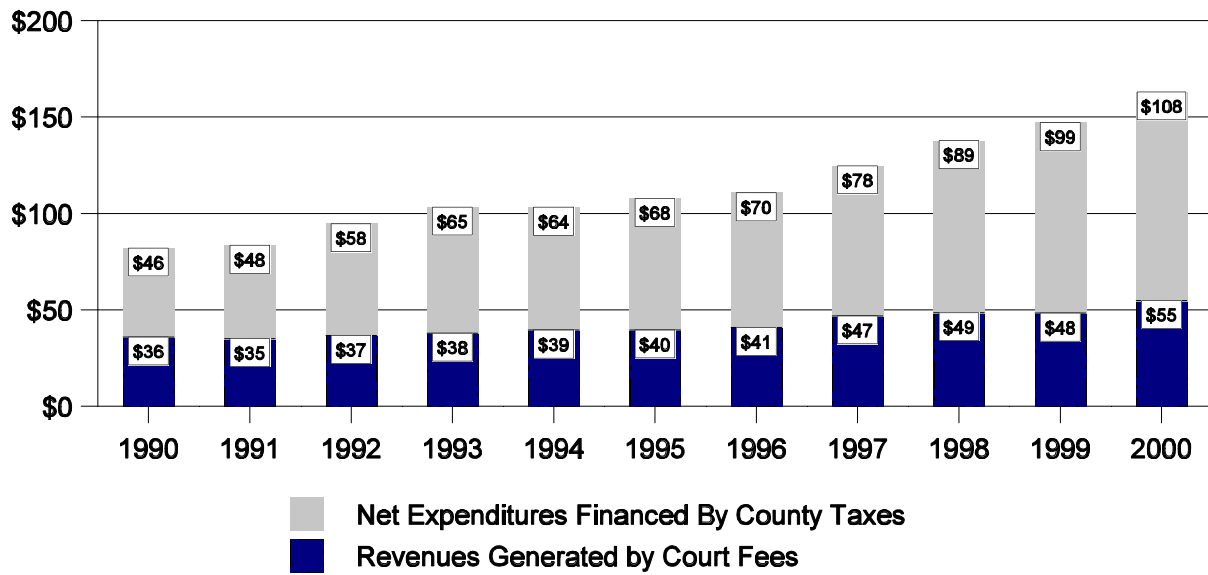


Projected Net Expenditures Financed by County Taxes (in Millions) Through 2005



Attachment E

Sources of Revenue for Court Operations (in Millions)
1990 through 2000



ELKHART SUPERIOR COURT NO. 3

George W. Biddlecome, Judge
Elkhart County Courthouse
101 North Main Street, Suite 202
Goshen, Indiana 46526
Phone (219) 535-6440

August 21, 2001

Hon. John Ulmer
130 N. Main Street
Goshen, IN 46526

Dear Representative Ulmer,

Thank you for your inquiry concerning our experience in applying I.C. §34-10-1-2. As you are aware, that statute requires that we provide counsel at no cost to all indigent litigants in civil cases. We believe this will impose an increasingly weighty burden on trial courts throughout the State.

By way of background, the United States Supreme Court has mandated the appointment of counsel at public expense for indigent litigants in civil proceedings which may result in the loss of liberty. It has also recognized that fundamental due process rights are implicated in certain other types of civil proceedings, such as those which may result in the termination of parental rights or the involuntary commitment of a person to a psychiatric hospital. While it has not held that an indigent party is automatically entitled to the appointment of a lawyer in cases of this sort, the Court has certainly implied that providing pauper counsel in such circumstances may be essential to the protection of the indigent litigant's rights to due process.

The State of Indiana has gone substantially farther through the enactment of statutes which are now codified as Indiana Code §§34-10-1-1 and 34-10-1-2. Those statutes require the appointment of counsel upon demand for all indigent litigants in all types of civil cases. The requirement that trial courts indiscriminately appoint pauper counsel in this manner gives rise to several serious problems.

First and foremost of these problems is the fact that our statutes have not created a mechanism for finding the required services. Our appellate courts have construed I.C. §34-10-1-2 as prohibiting payment of pauper counsel appointed pursuant to that statute with public funds. See Holmes v. Jones, 719 1~.E.2d 843 (Ind.App 1999). Additionally, Indiana courts have held that lawyers cannot be required to serve as pauper counsel without just compensation. See Holmes v. Jones, id; and Ho2y v. McCarthy, 1890, 24 N.E. 103 8, 124 Ind. 464. In Board of Comly Comrn'rs v. Pollard, 5 5 N.E. 87, 153 Ind. 371, (1899), our Supreme Court posited that younger members of the bar would eagerly accept such assignments in order to gain experience in the courtroom and a reputation as a litigator. While that may have been the case in the 19' century, it is most certainly untrue in this day of huge student loans and burgeoning overhead.

A second, and somewhat related problem, stems from the fact that indigent litigants are entitled to pauper counsel no matter how frivolous or farfetched their claim or defense may be. Most people would agree that a physically abused wife is entitled to representation in her dissolution of marriage action regardless of her ability to pay for the services of an attorney. More problematic is the right to counsel on the part of a prisoner at the Indiana Department of Correction who files suit to force prison officials to provide free Home Box Office or Showtime to inmates. In spite of the disparity in the merits of these two cases, both the battered woman and the movie-loving prisoner are equally entitled to counsel at no expense. The difficulties created by the requirement that paupers be provided with free lawyers regardless of the merits of their positions are exacerbated by the lack of public funding discussed above. In our experience, most lawyers will respond positively to the need to periodically represent indigent clients who truly require the services of an attorney. The same lawyers are far less willing to devote time and resources to pointless litigation. Indeed, Rule 3.1 of the Indiana Rules Of Professional Conduct prohibits the bringing of a frivolous claim or assertion of a frivolous defense.

It is our hope that the Indiana Legislature will afford trial judges throughout the state the ability to decline to appoint counsel for paupers in cases in which the indigent party is pursuing a frivolous claim or asserting a defense which is utterly lacking in merit. We also ask that you provide a method that we can employ in raising funds to pay those lawyers whom we appoint to represent indigents who are genuinely in need of legal services. These two reforms will greatly benefit the judiciary, the bar and the public as a whole.
Thank you in advance for your consideration.

Sincerely,

George Biddlecome, Judge
Elkhart Superior Court No. 3

Terry Shewmaker, Judge
Elkhart Circuit Court

GWB/mb

OLGA H. STICKEL

PHONE 9 53

Elkhart Superior Court Number. 4

101 North Main Street
Suite 106
GOSHEN, INDIANA

August 28, 2001

Mr. John Ulmer
130 N. Main Street
Goshen, IN 46526

Re: Assignment of Attorney in a Civil Case for an Indigent Person per I.C. 34-10-1-2

Dear Mr. Ulmer:

I know that you are involved in ongoing discussions about I.C. 34-10-1-2 which statute requires the court to assign an attorney to an indigent person in a civil case and also provides that the attorney will not be paid a fee. I have recently had a case filed in Elkhart Superior Court No. 4 which demonstrates the difficulties that this law may create.

On July 26, 2001, a certain insurance company filed a lawsuit against two defendants who are currently incarcerated at the Department of Corrections and who will be there until the year 2008. These two defendants have already been convicted of Reckless Homicide and five counts of Criminal Recklessness Causing Serious Bodily Injury While Armed With A Deadly Weapon -charges resulting from a head on collision in which a four year old child was killed, two siblings paralyzed and other members of the family seriously i-q'ured. The civil case filed in Elkhart Superior Court 4 is based on these same injuries which were the subject of the criminal case. Plaintiffs have requested several thousand dollars in damages.

On August 13, 2001, one of the defendants filed a Motion for Appointment of Counsel and demonstrated by affidavit that he was indigent, citing I.C. 34-10-1-2. Because of this statute, the court must now, somehow, assign an attorney who will represent the defendant without taking a fee.

Due to the very serious issues involved, this is a case that will likely require a substantial amount of an attorney's time. Moreover, the defendant is incarcerated in Southern Indiana. An attorney consulting with the defendant may find it necessary to travel to Southern Indiana, thus spending additional time and his own funds. If there is any discovery to be done, it would have

to be at the expense of the attorney. Consequently, I am not at all confident that I will be able to find someone to represent the defendant per I.C. 34-10-1-2. Furthermore, because the defendant has requested this appointment of counsel, plaintiff's attorney is not permitted to contact the defendant to determine if a settlement may be reached.

Frankly, at this point, a solution does not suggest itself to me. I am not likely to find an attorney to represent the defendant for free as the statute requires. I doubt that the county would be willing to pay for an appointed attorney since the statute does not require that they pay for one. I know of no state funded organization that would be helpful in this instance. Although I have directed the defendant to contact the local legal aid organizations, they are not required to take the case. I have contacted both the Indiana Judicial Center and Judge Nemeth who heads the Pro-Bono Committee. Neither was able to suggest another course of action not mentioned in this letter.

Of course I realize that the legislature is unable to provide immediate assistance in this type of situation, however, it is likely that such a request will occur again in this court and in other courts in the state. An amendment to the statute which would permit more options might be helpful in arriving at a solution.

Thank you for your time and efforts.

Sincerely,

Olga Stickel

OHS/cww

SENATE BILL No. 104

DIGEST OF INTRODUCED BILL

Citations Affected: [IC 34-10-1](#); [IC 34-10-2](#).

Synopsis: Right to pauper counsel in civil actions. Eliminates the general duty of a county to provide an attorney for an indigent person in all civil actions.

Effective: Upon passage.

Kenley

January 8, 2001, read first time and referred to Committee on Judiciary.



Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 104

A BILL FOR AN ACT to repeal certain provisions of the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. THE FOLLOWING ARE REPEALED
- 2 [EFFECTIVE UPON PASSAGE]: [IC 34-10-1](#); [IC 34-10-2](#).
- 3 SECTION 2. **An emergency is declared for this act.**

Reprinted
February 27, 2001

SENATE BILL No. 104

DIGEST OF SB 104 (Updated February 26, 2001 2:37 PM - DI 51)

Citations Affected: IC 34-10.

Synopsis: Right to pauper counsel in civil actions. Eliminates the general duty of a court to provide an attorney for an indigent person in a civil action. Establishes a civil indigent counsel defense fund for each court. Gives a court the discretion to appoint an attorney for an indigent person in a civil action if funds are available in the court's civil indigent counsel defense fund. Establishes procedures for the appropriation of money to a civil indigent counsel defense fund.

Effective: Upon passage.

Kenley

January 8, 2001, read first time and referred to Committee on Judiciary.
February 22, 2001, reported favorably — Do Pass.
February 26, 2001, read second time, amended, ordered engrossed.

SB 104—LS 6034/DI 51



Reprinted
February 27, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

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Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 104

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-10-1-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a)**
3 **Subject to subsection (d)**, if the court is satisfied that a
4 person who makes an application described in section 1 of this
5 chapter does not have sufficient means to prosecute or defend
6 the action, the court ~~shall~~ **may**:
7 (1) admit the applicant to prosecute or defend as an
8 indigent person; and
9 (2) assign an attorney to defend or prosecute the cause.
10 **(b)** All officers required to prosecute or defend the action
11 shall do their duty in the case without taking any fee or reward
12 from the indigent person.
13 **(c) A civil indigent counsel defense fund is established**
14 **for each court with civil jurisdiction in Indiana. Money**
15 **appropriated to a court's civil indigent counsel defense**
16 **fund may be used only for the payment of the reasonable**

SB 104—LS 6034/DI 51



1 attorney's fees, costs, and expenses of attorneys assigned
2 to represent indigent persons under this section.

3 (d) The court may order the:

4 (1) payment of compensation to; or

5 (2) reimbursement of costs or expenses incurred by;
6 attorneys assigned to represent indigent persons under
7 this section only to the extent that money has been
8 appropriated to and is available in the court's civil indigent
9 counsel defense fund.

10 (e) A political subdivision with a court may appropriate
11 money to the court's civil indigent counsel defense fund
12 only after the court has complied with this subsection. The
13 court shall publish notice of the court's request for an
14 appropriation in accordance with IC 5-3-1. The notice must
15 report the amount of the proposed appropriation and the
16 amount expended from the court's civil indigent counsel
17 defense fund in the immediately preceding calendar year.
18 A court's notice under this subsection may be combined
19 with the notice of another court. After the notice is
20 published, the judge of the court shall meet with the fiscal
21 body of the political subdivision in a public meeting. The
22 judge shall present to the fiscal body a summary of the
23 information contained in the published notice and discuss
24 with the fiscal body the use of money in the court's civil
25 indigent counsel defense fund. After a court has published
26 the notice and met with the fiscal body, the political
27 subdivision may appropriate money to the court's civil
28 indigent counsel defense fund for use in the next calendar
29 year. The appropriation must be adopted by the fiscal body
30 of the political subdivision before the time specified in
31 IC 6-1.1-17-5 for the adoption of the political subdivision's
32 annual budget.

33 SECTION 2. An emergency is declared for this act.



April 3, 2001

ENGROSSED SENATE BILL No. 104

DIGEST OF SB 104 (Updated March 28, 2001 4:25 PM - DI 106)

Citations Affected: IC 16-37; IC 34-10.

Synopsis: Right to pauper counsel in civil actions. Provides for a \$2 civil indigent fee to be added to the cost of a birth certificate. Eliminates the general duty of a court to provide an attorney for an indigent person in a civil action. Establishes a civil indigent fund for each county. Gives a court the discretion to appoint an attorney for an indigent person in a civil action. An attorney appointed to represent an indigent in a civil action may be reimbursed from the civil indigent fund or from money appropriated to the court. Establishes procedures for the disbursement of money from the civil indigent fund.

Effective: Upon passage.

Kenley

(HOUSE SPONSORS — DVORAK, STEELE)

January 8, 2001, read first time and referred to Committee on Judiciary.
February 22, 2001, reported favorably — Do Pass.
February 26, 2001, read second time, amended, ordered engrossed.
February 27, 2001, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 12, 2001, read first time and referred to Committee on Judiciary.
April 2, 2001, amended, reported — Do Pass.

April 3, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED SENATE BILL No. 104

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-37-1-9 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A local
3 health department may make a charge under IC 16-20-1-27 for
4 each certificate of birth, death, or stillbirth registration.
5 (b) If the local department of health makes a charge for a
6 certificate of death under subsection (a), a one dollar (\$1)
7 coroners continuing education fee must be added to the rate
8 established under IC 16-20-1-27. The local department of
9 health shall deposit any coroners continuing education fees
10 with the county auditor within thirty (30) days after collection.
11 The county auditor shall transfer semiannually any coroners
12 continuing education fees to the treasurer of state.
13 (c) **If the local department of health makes a charge for a**
14 **certificate of birth under subsection (a), a two dollar (\$2)**
15 **civil indigent fee must be added to the rate established**
16 **under IC 16-20-1-27. The local department of health shall**

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deposit the civil indigent fee in the civil indigent fund (IC 34-10-1-2) not later than thirty (30) days after collection. Fees deposited in the civil indigent fund do not revert to the state.

(d) Notwithstanding IC 16-20-1-27, a charge may not be made for furnishing a certificate of birth, death, or stillbirth registration to a person or to a member of the family of a person who needs the certificate for one (1) of the following purposes:

(1) To establish the person's age or the dependency of a member of the person's family in connection with:

(A) the person's service in the armed forces of the United States; or

(B) a death pension or disability pension of a person who is serving or has served in the armed forces of the United States.

(2) To establish or to verify the age of a child in school who desires to secure a work permit.

SECTION 2. IC 34-10-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) If the court is satisfied that a person who makes an application described in section 1 of this chapter does not have sufficient means to prosecute or defend the action, the court: ~~shall~~:

(1) **shall** admit the applicant to prosecute or defend as an indigent person; and

(2) **may** assign an attorney to defend or prosecute the cause.

(b) All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

(c) A civil indigent fund is established for each county in Indiana. Money deposited in the civil indigent fund may be used only for the payment of the reasonable attorney's fees, costs, and expenses of attorneys assigned to represent indigent persons under this section. Funds in the indigent civil fund may be disbursed in accordance with rules adopted by the majority of judges having jurisdiction over civil cases in a county.

(d) The reasonable attorney's fees and expenses of an attorney appointed to represent an applicant under this chapter shall be paid from the civil indigent fund under subsection (c) or from money appropriated to the court:



- 1 **(1) appointing the attorney, if the action was not**
- 2 **transferred from another county; or**
- 3 **(2) from which the action was transferred, if the action**
- 4 **was transferred from another county.**
- 5 **SECTION 3. An emergency is declared for this act.**



Reprinted
April 11, 2001

ENGROSSED SENATE BILL No. 104

DIGEST OF SB 104 (Updated April 10, 2001 6:18 PM - DI 106)

Citations Affected: IC 16-37; IC 33-9; IC 33-19; IC 34-10.

Synopsis: Right to pauper counsel in civil actions. Creates a civil and indigent counsel fund from the former public defense fund to reimburse counties for the cost of representing indigents in civil and criminal cases. Provides for a \$2 civil indigent fee to be added to the cost of a birth certificate; this fee is to be deposited in the civil and criminal indigent counsel fund but may only be used to reimburse counties for expenses related to appointed counsel in civil indigent cases. Eliminates the general duty of a court to provide an attorney for an indigent person in a civil action. Gives a court the discretion to appoint an attorney for an indigent person in a civil action. An attorney appointed to represent an indigent in a civil action may be reimbursed from the civil and criminal indigent counsel fund or from money appropriated to the court. Establishes procedures for the disbursement of money from the civil and criminal indigent counsel fund. Provides that, with the exception of money deposited in the fund from the civil indigent fee, a county may not be reimbursed for the expenses of appointed counsel in civil cases unless all outstanding claims for reimbursement for criminal cases have been paid in full. Makes conforming amendments.

Effective: Upon passage.

Kenley

(HOUSE SPONSORS — DVORAK, STEELE)

January 8, 2001, read first time and referred to Committee on Judiciary.
February 22, 2001, reported favorably — Do Pass.
February 26, 2001, read second time, amended, ordered engrossed.
February 27, 2001, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 12, 2001, read first time and referred to Committee on Judiciary.
April 2, 2001, amended, reported — Do Pass.
April 10, 2001, read second time, amended, ordered engrossed.

Reprinted
April 11, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED SENATE BILL No. 104

A BILL FOR AN ACT to amend the Indiana Code concerning
civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-37-1-9 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A local
3 health department may make a charge under IC 16-20-1-27 for
4 each certificate of birth, death, or stillbirth registration.
5 (b) If the local department of health makes a charge for a
6 certificate of death under subsection (a), a one dollar (\$1)
7 coroners continuing education fee must be added to the rate
8 established under IC 16-20-1-27. The local department of
9 health shall deposit any coroners continuing education fees
10 with the county auditor within thirty (30) days after collection.
11 The county auditor shall transfer semiannually any coroners
12 continuing education fees to the treasurer of state.
13 (c) **If the local department of health makes a charge for a**
14 **certificate of birth under subsection (a), a two dollar (\$2)**
15 **civil indigent fee must be added to the rate established**
16 **under IC 16-20-1-27. The local department of health shall**

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deposit the civil indigent fee in the civil and criminal indigent counsel fund (IC 33-9-14-1) not later than thirty (30) days after collection. Fees deposited in the fund do not revert to the state.

(d) Notwithstanding IC 16-20-1-27, a charge may not be made for furnishing a certificate of birth, death, or stillbirth registration to a person or to a member of the family of a person who needs the certificate for one (1) of the following purposes:

(1) To establish the person's age or the dependency of a member of the person's family in connection with:

(A) the person's service in the armed forces of the United States; or

(B) a death pension or disability pension of a person who is serving or has served in the armed forces of the United States.

(2) To establish or to verify the age of a child in school who desires to secure a work permit.

SECTION 2. IC 33-9-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The commission shall do the following:

(1) Make recommendations to the supreme court of Indiana concerning standards for indigent defense services provided for defendants against whom the state has sought the death sentence under IC 35-50-2-9, including the following:

(A) Determining indigency and eligibility for legal representation.

(B) Selection and qualifications of attorneys to represent indigent defendants at public expense.

(C) Determining conflicts of interest.

(D) Investigative, clerical, and other support services necessary to provide adequate legal representation.

(2) Adopt guidelines and standards for indigent ~~defense~~ services under which the counties will be eligible for reimbursement under IC 33-9-14, including but not limited to the following:

(A) Determining indigency and the eligibility for legal representation.

(B) The issuance and enforcement of orders requiring the defendant to pay for the costs of court appointed legal representation under IC 33-9-11.5.

(C) The use and expenditure of funds in the county



supplemental public defender services fund established by IC 33-9-11.5.

(D) Qualifications of attorneys to represent indigent defendants at public expense.

(E) Compensation rates for salaried, contractual, and assigned counsel.

(F) Minimum and maximum caseloads of public defender offices and contract attorneys.

(3) Make recommendations concerning the delivery of indigent defense services in Indiana.

(4) Make an annual report to the governor, the general assembly, and the supreme court on the operation of the ~~public defense~~ **civil and criminal indigent counsel** fund.

SECTION 3. IC 33-9-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The ~~public defense~~ **civil and criminal indigent counsel** fund is established to receive court costs or other revenues for county reimbursement and administrative expenses. The fund shall be administered by the division of state court administration of the supreme court of Indiana. **Money deposited in the fund under IC 16-37-1-9 may be used only to reimburse a county for expenses related to the assignment of an attorney to represent an indigent in a civil case under IC 34-10-1-2.**

SECTION 4. IC 33-9-14-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the ~~public defense~~ **civil and criminal indigent counsel** fund for an amount equal to fifty percent (50%) of the county's expenditures for indigent defense services provided to a defendant against whom the death sentence is sought under IC 35-50-2-9.

(b) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the ~~public defense~~ **civil and criminal indigent counsel** fund for an amount equal to forty percent (40%) of the county's expenditures for indigent defense services provided in all noncapital **criminal** cases except misdemeanors.

(c) A request under this section from a county described in IC 33-9-15-1(3) may be limited to expenditures for indigent **criminal** defense services provided by a particular division of a court.



(d) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the civil and criminal indigent counsel fund for an amount equal to forty percent (40%) of the county's expenditures for civil indigent services under IC 34-10-1-2.

SECTION 5. IC 33-9-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. If the ~~public defense~~ **civil and criminal indigent counsel** fund would be reduced below two hundred-fifty thousand dollars (\$250,000) by payment in full of all county reimbursement for net expenditures in non-capital **criminal** cases that is certified by the state court administrator in any quarter, the commission shall suspend payment of reimbursement to counties in non-capital cases until the next semi-annual deposit in the ~~public defense~~ **civil and criminal indigent counsel** fund. At the end of the suspension period, the state court administrator shall certify all suspended reimbursement. If the ~~public defense~~ **civil and criminal indigent counsel** fund would be reduced below two hundred-fifty thousand dollars (\$250,000) by payment in full of all suspended reimbursement in non-capital cases, the amount certified by the state court administrator for each county entitled to reimbursement shall be prorated. **However, with the exception of money deposited in the fund under IC 16-37-1-9, the state court administrator may not certify for payment costs arising from the assignment of an attorney to represent an indigent in a civil case unless all reimbursements to counties for expenses incurred in criminal cases can be paid in full.**

SECTION 6. IC 33-9-15-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The board shall prepare a comprehensive plan that must include at least one (1) of the following methods of providing legal **criminal** defense services to indigent persons:

- (1) Establishing a county public defender's office.
- (2) Contracting with an attorney, a group of attorneys, or a private organization.
- (3) Utilizing an assigned counsel system of panel attorneys for case-by-case appointments under section 9 of this chapter.
- (4) In a county described in section 1(3) of this chapter, establishing a public defender's office for the criminal division of the superior court.



(b) The plan prepared under subsection (a) shall be submitted to the commission.

SECTION 7. IC 33-9-15-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) This chapter does not prevent a court from appointing counsel other than counsel provided for under the board's plan for providing **criminal** defense services to an indigent person when the interests of justice require. A court may also appoint counsel to assist counsel provided for under the board's plan as co-counsel when the interests of justice require. Expenditures by a county for **criminal** defense services not provided under the county public defender board's plan are not subject to reimbursement from the ~~public defense~~ **civil and criminal indigent counsel** fund under IC 33-9-14.

(b) A judge of a court having criminal jurisdiction may make a written request to the state public defender to provide a qualified attorney for the defense of a person charged in the court with a criminal offense and eligible for representation at public expense if the judge determines:

(1) that an attorney provided under the county public defender board's plan is not qualified or available to represent the person; or

(2) that in the interests of justice an attorney other than the attorney provided for by the county defender board's plan should be appointed.

The judge shall attach to the request a copy of the information or indictment. Expenditures for representation under this subsection shall be paid by the county according to a fee schedule approved by the commission. These expenditures are eligible for reimbursement from the ~~public defense~~ **civil and criminal indigent counsel** fund.

SECTION 8. IC 33-9-15-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) A county public defender board shall submit a written request for reimbursement to the county auditor. The request must set forth the total of the county's expenditures for indigent **criminal** defense services to the county auditor and may be limited in a county described in section 1(3) of this chapter to expenditures for indigent defense services provided by a particular division of a court. The county auditor shall review the request and certify the total of the county's expenditures for indigent defense services to the public defender commission.

(b) Upon certification by the public defender commission



that the county's indigent defense services meet the commission's standards, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of a sum equal to forty percent (40%) of the county's certified expenditures for indigent defense services provided in noncapital cases except misdemeanors.

(c) If a county's indigent defense services fail to meet the standards adopted by the public defender commission, the commission shall notify the county public defender board and the county fiscal body of the failure to comply with the commission's standards. Unless the county public defender board corrects the deficiencies to comply with the standards not more than ninety (90) days after the date of the notice, the county's eligibility for reimbursement from the ~~public defense~~ **civil and criminal indigent counsel** fund terminates at the close of that fiscal year.

SECTION 9. IC 33-19-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) On June 30 and on December 31 of each year, the auditor of state shall transfer to the treasurer of state six million seven hundred four thousand two hundred fifty-seven dollars (\$6,704,257) for distribution under subsection (b).

(b) On June 30 and on December 31 of each year the treasurer of state shall deposit into:

- (1) the family violence and victim assistance fund established under IC 12-18-5-2 an amount equal to eleven and eight-hundredths percent (11.08%);
- (2) the Indiana judges' retirement fund established under IC 33-13-8 an amount equal to twenty-five and twenty-one hundredths percent (25.21%);
- (3) the law enforcement academy building fund established under IC 5-2-1-13 an amount equal to three and fifty-two hundredths percent (3.52%);
- (4) the law enforcement training fund established under IC 5-2-1-13 an amount equal to fourteen and nineteen-hundredths percent (14.19%);
- (5) the violent crime victims compensation fund established under IC 5-2-6.1-40 an amount equal to sixteen and fifty-hundredths percent (16.50%);
- (6) the motor vehicle highway account an amount equal to twenty-six and ninety-five hundredths percent (26.95%);
- (7) the fish and wildlife fund established by IC 14-22-3-2 an amount equal to thirty-two hundredths of one percent



(0.32%); and

(8) the Indiana judicial center drug and alcohol programs fund established under IC 12-23-14-17 for the administration, certification, and support of alcohol and drug services programs under IC 12-23-14 an amount equal to two and twenty-three hundredths percent (2.23%);

of the amount transferred by the auditor of state under subsection (a).

(c) On June 30 and on December 31 of each year the auditor of state shall transfer to the treasurer of state one million two hundred thousand dollars (\$1, 200,000) for deposit into the ~~public defense~~ **civil and criminal indigent counsel** fund established under IC 33-9-14.

SECTION 10. IC 34-10-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a)** If the court is satisfied that a person who makes an application described in section 1 of this chapter does not have sufficient means to prosecute or defend the action, the court: ~~shall:~~

(1) **shall** admit the applicant to prosecute or defend as an indigent person; and

(2) **may** assign an attorney to defend or prosecute the cause.

(b) All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

(c) The reasonable attorney's fees and expenses of an attorney appointed to represent an applicant under this chapter shall be paid from the civil and criminal indigent counsel fund (IC 33-9-14-1) or from money appropriated to the court:

(1) appointing the attorney, if the action was not transferred from another county; or

(2) from which the action was transferred, if the action was transferred from another county.

SECTION 11. An emergency is declared for this act.



Introduced Version

SENATE BILL No. 65

DIGEST OF INTRODUCED BILL

Citations Affected: [IC 34-10-1-2.](#)

Synopsis: Indigent parties in civil actions. Authorizes a court to appoint an attorney at no expense to an indigent person for the purpose of prosecuting or defending the indigent person's interests in a civil action only if the court determines that certain exceptional circumstances justify the appointment. Requires the court to pay the reasonable attorney's fees and litigation expenses incurred by the appointed attorney.

Effective: Upon passage.

Lanane

January 8, 2001, read first time and referred to Committee on Judiciary.

Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 65

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. [IC 34-10-1-2](#) IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]January 8: Sec. 2.

3 **(a) Judiciary. This section shall not be construed to**
4 **prohibit a court from participating in a pro bono legal**
5 **services program or other program that provides legal**
6 **services to litigants:**

7 **(1) without charge; or**

8 **(2) at a reduced fee.**

9 **(b)** If the court is satisfied that a person who makes an
10 application described in section 1 of this chapter does not have
11 sufficient means to prosecute or defend the action, the court:
12 ~~shall:~~

13 **(1) shall** admit the applicant to prosecute or defend as an
14 indigent person; and

15 **(2) may, under exceptional circumstances,** assign an
16 attorney to defend or prosecute the cause.

2001

IN 65—LS 6074/DI 76



1 (c) The factors that a court may consider under
2 subsection (b)(2) include the following:

3 (1) The likelihood of the applicant prevailing on the
4 merits of the applicant's claim or defense.

5 (2) The applicant's ability to investigate and present
6 the applicant's claims or defenses without an attorney
7 given the type and complexity of the facts and legal
8 issues in the action.

9 (d) The court shall deny an application made under
10 section 1 of this chapter if the court determines any of the
11 following:

12 (1) The applicant failed to make a diligent effort to
13 obtain an attorney before filing the application.

14 (2) The applicant is unlikely to prevail on the
15 applicant's claim or defense.

16 (e) All officers required to prosecute or defend the action
17 shall do their duty in the case without taking any fee or reward
18 from the indigent person.

19 (f) The reasonable attorney's fees and expenses of an
20 attorney appointed to represent an applicant under section
21 1 of this chapter shall be paid from the money
22 appropriated to the court:

23 (1) appointing the attorney, if the action was not
24 transferred to another county; or

25 (2) from which the action was transferred, if the action
26 was transferred to another county.

27 SECTION 2. An emergency is declared for this act.



Attachment I

Introduced Version

HOUSE BILL No. 1071

DIGEST OF INTRODUCED BILL**Citations Affected:** [IC 34-10-1-2.](#)

Synopsis: Indigent parties in civil actions. Allows a court the option of appointing an attorney at no expense to an indigent person for the purpose of prosecuting or defending the person's interests in a civil action when the court determines exceptional circumstances exist that justify the appointment. Requires the court to pay reasonable attorney's fees and litigation expenses incurred by the appointed attorney.

Effective: Upon passage.

Ulmer

January 8, 2001, read first time and referred to Committee on Judiciary.



Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1071

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. [IC 34-10-1-2](#) IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a) This**
3 **section shall not be construed to prohibit a court from**
4 **participating in a pro bono legal services program or any**
5 **other program that provides legal services to litigants**
6 **without charge or at a reduced fee.**
7 **(b)** If the court is satisfied that a person who makes an
8 application described in section 1 of this chapter does not have
9 sufficient means to prosecute or defend the action, the court:
10 ~~shall:~~
11 (1) **shall** admit the applicant to prosecute or defend as an
12 indigent person; and
13 (2) **may, under exceptional circumstances,** assign an
14 attorney to defend or prosecute the cause.
15 **(c) The factors that a court may consider under**



subsection (b)(2) include the following:

(1) The likelihood that the applicant will prevail on the merits of the applicant's claim or defense.

(2) The applicant's ability to investigate and present the applicant's claims or defenses without an attorney, given the type and the complexity of the facts and legal issues in the action.

(d) The court shall deny an application made under subsection (b)(2) if the court determines either of the following:

(1) The applicant failed to make a diligent effort to obtain an attorney before filing an application.

(2) The applicant is unlikely to prevail on the applicant's claim or defense.

(e) All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

(f) The reasonable attorney's fees and expenses of an attorney appointed to represent an applicant under section 1 of this chapter shall be paid from the money appropriated to the court:

(1) appointing the attorney, if the action was not transferred from another county; or

(2) from which the action was transferred, if the action was transferred from another county.

SECTION 2. An emergency is declared for this act.

